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9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE DISTRICT OF OREGON

11 BAHRAM SABER,)
12)
13 Plaintiff,) No. CV-05-373-HU
14 v.)
15)
16 SOCIAL SECURITY ADMINISTRA-)
17 TION, PRESIDENT GEORGE W.) FINDINGS & RECOMMENDATION/
18 BUSH, JR., STATE OF OREGON'S) ORDER
19 AGING & DISABILITY SERVICE,)
20 UNITED STATES OF AMERICA,)
21 FORMER PRESIDENT GEORGE H.W.)
22 BUSH,)
23 Defendants.)
24)
25)
26)
27)
28)

HUBEL, Magistrate Judge:

Pro se plaintiff Bahram Saber brings this action against the Social Security Administration, President George W. Bush, and the State of Oregon's Aging and Disability Service. In the Complaint filed March 15, 2005, these are the three defendants listed in the section entitled "List Defendant Name(s)." Above that section, however, plaintiff also appears to name the United States of America as a defendant. And, in the Civil Cover Sheet filed with the Complaint, he appears to name former President George H.W. Bush

1 as a defendant as well. For the purposes of this Order and
2 Findings and Recommendation, I assume that plaintiff intended to
3 name all five as defendants. Additionally, the Complaint does not
4 indicate whether plaintiff seeks injunctive relief, money damages,
5 or both. For the purposes of this Order and Findings &
6 Recommendation, I assume he seeks money damages only because he
7 does appear to seek an order compelling the award of disability
8 benefits or other injunctive-type relief and he mentions something
9 about "financial," and "emotion" in the course of his allegations,
10 suggesting that he seeks damages.

11 The allegations in the Complaint are somewhat difficult to
12 follow, but the bulk of the allegations seem to be that the federal
13 government has unwisely chosen to spend its revenue on the war in
14 Iraq instead of on what plaintiff considers to be more worthy
15 pursuits such as combating AIDS. There is one allegation that
16 plaintiff was denied benefits because of his ethnic background.
17 Given that the defendants include the Social Security
18 Administration and the Oregon Aging and Disability Service, I
19 understand this allegation to be that plaintiff was unlawfully
20 denied disability benefits because of his ethnicity.

21 Along with the Complaint, plaintiff filed a motion to proceed
22 in forma pauperis (IFP). I denied the IFP motion in a March 28,
23 2005 Order because it was incomplete. Plaintiff filed another IFP
24 motion on May 10, 2005. Because of plaintiff's IFP request, I may
25 review the allegations of the Complaint under 28 U.S.C. § 1915.
26 That statute provides that the court may dismiss the case at any
27 time if the allegations are frivolous, if the action fails to state
28 a claim for which relief may be granted, or if a defendant is

1 immune from an award of monetary relief. 28 U.S.C. §
2 1915(e)(2)(B)(i), (ii), (iii); Lopez v. Smith, 203 F.3d 1122, 1126
3 n.7 (9th Cir. 2000) (section 1915(e) applies to all IFP complaints,
4 not just those filed by inmates). Although a review of plaintiff's
5 second IFP motion indicates that he should be granted IFP, I
6 dismiss the Complaint under section 1915(e)(2)(B).

7 Construed liberally in plaintiff's favor, the allegations
8 suggest he might have two claims based on his contention that he
9 was denied disability benefits because of his ethnic background.
10 In theory, such an allegation could form the basis of an action
11 against state officials under 42 U.S.C. § 1983¹ or against federal
12 officials under Bivens v. Six Unknown Agents of Fed. Bureau of
13 Narcotics, 403 U.S. 388 (1971).² The alleged constitutional right
14 at issue would be plaintiff's Fourteenth Amendment equal protection
15 right. None of the other facts alleged by plaintiff support a
16 claim and I recommend that they be dismissed for failure to state
17 a claim.

18 While plaintiff's ethnic discrimination allegation could
19 perhaps become the basis of a civil action, he may not proceed
20 against the defendants at this time. First, a claim under section
21 1983 may be brought against individual state actors, but not
22 against a state agency. States are not "persons" for the purposes
23 of section 1983. Arizonans for Official English v. Arizona, 520
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25 ¹ 42 U.S.C. § 1983 creates a civil action for damages
26 against a state officer in his or her individual capacity for
27 violations of the rights, privileges, or immunities secured by
the United States Constitution or federal laws.

28 ² A Bivens action is a civil action against federal
officials for injuries to a constitutionally protected interest.

1 U.S. 43, 69 (1997); Doe v. Lawrence Livermore Nat'l Lab., 131 F.3d
2 836, 839 (9th Cir. 1997). And, "governmental entities that are
3 considered arms of the State for Eleventh Amendment purposes are
4 [also] not 'persons' under § 1983." Lawrence Livermore Nat'l Lab.,
5 131 F.3d at 839 (internal quotation omitted). Thus, any claim
6 against the Oregon Aging and Disability Service must be dismissed.³
7 Should plaintiff choose to file an Amended Complaint containing a
8 section 1983 claim against a state actor, he should understand that
9 liability under section 1983 arises only upon a showing of personal
10 participation by the named defendant and there is no respondeat
11 superior liability. E.g., Ortez v. Washington County, 88 F.3d 804,
12 809 (9th Cir. 1996) (proper to dismiss where no allegations of
13 knowledge of or participation in alleged section 1983 violations).

14 Second, a Bivens claim is not properly brought against any of
15 the federal defendants. The personal involvement requirement noted
16 in the previous paragraph regarding section 1983 claims also
17 applies to Bivens actions. Bibeau v. Pacific Northwest Research
18 Foundation, Inc., 188 F.3d 1105, 1114 (9th Cir. 1999) (no
19 respondeat liability in Bivens actions), amended, 208 F.3d 831 (9th
20 Cir. 2000; Simpkins v. District of Columbia Gov't, 108 F.3d 366,
21 369 (D.C. Cir. 1997) (complaint must allege personal involvement by
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23 ³ It is possible in some circumstances to sue a state
24 agency for damages under section 1983, but the plaintiff must
25 plead and prove that the agency is not an "arm of the state"
26 under the relevant five-part test used in the Ninth Circuit. See
27 Beentjes v. Placer County Air Pollution Control Dist., 397 F.3d
28 775, 777-78 (9th Cir. 2005); Aguon v. Commonwealth Ports Auth.,
316 F.3d 899, 901 (9th Cir. 2003). The Complaint in this case
contains no articulation of any facts relevant to this analysis.
Accordingly, it fails to state a viable claim against a state
agency.

1 government official in events giving rise to constitutional claim
2 under Bivens). As there is no allegation of any personal
3 involvement in the alleged ethnic discrimination by either
4 President George W. Bush or former President George H.W. Bush, a
5 Bivens claim against them cannot succeed.

6 Moreover, President George W. Bush enjoys presidential
7 immunity from suit for damages for conduct that is part of the
8 President's official duties. Forrester v. White, 484 U.S. 219, 225
9 (1988); Nixon v. Fitzgerald, 457 U.S. 731, 756-58 (1982); cf.
10 Clinton v. Jones, 520 U.S. 681, 694-95 (1997) (no immunity from
11 suit for conduct not taken in official capacity). Thus, President
12 George W. Bush is immune from liability for damages for his
13 official actions.

14 Finally, a Bivens action may not be brought against the United
15 States or agencies of the United States. FDIC v. Meyer, 510 U.S.
16 471, 486 (1994) (no Bivens cause of action for damages against
17 federal agencies); Cato v. United States, 70 F.3d 1103, 1110 (9th
18 Cir. 1995) (no Bivens-type claim exists against the United States).
19 Thus, any Bivens claims against the United States and the Social
20 Security Administration must be dismissed. Plaintiff may properly
21 bring a Bivens claim for damages only against individual federal
22 officials.

23 CONCLUSION

24 Plaintiff's motion for IFP (#6) is granted. I recommend
25 dismissal of the Complaint under 28 U.S.C. § 1915(e)(2)(B)(ii) and
26 (iii) for failure to state a claim and because President George W.
27 Bush is immune from damages liability. I further recommend that
28 plaintiff be given leave to file an Amended Complaint within thirty

1 (30) days of the date that the Article III District Judge rules on
2 this Findings & Recommendation.

3 SCHEDULING ORDER

4 The above Findings and Recommendation will be referred to a
5 United States District Judge for review. Objections, if any, are
6 due June 15, 2005. If no objections are filed, review of the
7 Findings and Recommendation will go under advisement on that date.

8 If objections are filed, a response to the objections is due
9 June 29, 2005, and the review of the Findings and Recommendation
10 will go under advisement on that date.

11 IT IS SO ORDERED.

12 Dated this 31st day of May, 2005.

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15 /s/ Dennis James Hubel
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17 Dennis James Hubel
18 United States Magistrate Judge
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